Agrimal Project Sdn Bhd v Pendaftar Hakmilik, Pejabat Tanah dan Galian, Johor & Ors

HIGH COURT (JOHOR BAHRU) — ORIGINATING MOTION NO 25–2 OF 1997
ABDUL MALIK ISHAK J
10 JUNE 1997

Land Law *— Registrar's caveat — Application for removal of caveat — Discrepancies in Form 7 and Form 19A over the party pursuant to which the Registrar's caveat was entered — Whether a genuine mistake — Whether Registrar's caveat to be removed — Whether there was any fraud and improper dealing justifying entry of a Registrar's caveat — National Land Code 1965 s 320*

The plaintiff was the registered owner of 364 lots of land in Mukim Kluang, Johor ('the lands'). On 28 November 1996, the first defendant caused to be entered a Registrar's caveat on the lands by way of Form 7 which stated that the Registrar's caveat was entered for the purposes as stated in a letter dated 25 November 1996 bearing the reference number (PR) 35/84 from the Bahagian Pinjaman Perumahan. The letter of 25 November 1996 and another letter dated 1 November 1996 with the reference number (PR) 35/84 were in actual fact written by the Polis Diraja Malaysia, the fourth defendant to the first defendant. The plaintiff was served with notification of the entry of the Registrar's caveat in Form 19A which stated that the Registrar's caveat was entered on the application of the fourth defendant. The plaintiff applied to cancel the Registrar's caveat entered against the plaintiff's land, arguing, inter alia, that there was no evidence that the Bahagian Pinjaman Perumahan had applied for the entry of the Registrar's caveat and this being the case, the said entry was wrong, without legal basis and should be removed. On behalf of the first and fourth defendants, it was argued that this was a genuine mistake and the first defendant should not be penalized for the error. Furthermore, it was submitted that the registrar had in law a discretion to enter a Registrar's caveat to prevent fraud or improper dealing by virtue of s 320(1)(a) of the National Land Code 1965 ('the NLC'). The plaintiff also argued that there was no evidence — in the police report made by one Wu Chun Hung ('Wu'), a shareholder of the second defendant which led to the entry of the Registrar's caveat — indicative of any fraud or improper dealing over the lands nor did it extend to a claim of ownership over the lands.

Held, dismissing the application:

(1) From the factual matrix of the whole case, the registrar must have made a genuine mistake in recording the purpose of lodging the Registrar's caveat in Form 7. This was evident from Form 19A wherein it was stated the Registrar's caveat was entered on the application of the Polis Diraja Malaysia and the reference number in Form 7 bearing the reference number of the Polis Diraja

Malaysia. Ideally, an explanation should have been advanced for this mistake but it was so inconsequential that there was no necessity to do the same (see pp 684I and 685A–B).

(2) On perusal of the police report, it was abundantly clear that Wu was not confining himself to the shares of the plaintiff's company. The police report made reference to a written agreement dated 31 December 1997 wherein the second defendant purchased all the shares in the plaintiff's company and necessarily meant that all the rights and interests of the plaintiff including the 364 lots of land were also bought over by the second defendant. Seen from this perspective, it was perfectly all right for the police to request the registrar to enter the Registrar's caveat as there was an element of fraud (see pp 687D–E and 688D).

(3) The information relayed by the police to the registrar constituted in law sufficient material for the registrar to exercise his discretion to enter the Registrar's caveat which should remain until investigations had been completed by police (see p 690B–C); *AR PL Palaniappa Chettiar v PL AR Letchumanan Chettiar & Anor* [1982] 1 MLJ 232, *Lim Ah Hun v Pendaftar Hakmilik Tanah Pulau Pinang & Anor* [1990] 3 MLJ 34 and *Registrar of Titles v Temenggong Securities Ltd* [1976] 1 WLR 951; [1976] 2 MLJ 44 followed.

Per curiam:

The registrar's exercise of discretion cannot be examined unless it was exercised mala fide or ultra vires. Mandamus will not lie to direct the registrar to exercise his discretion in a particular way but will lie to direct him to exercise it if he failed to exercise it at all. The registrar's decision to enter the Registrar's caveat (but not in regard to his failure to do so) may be tested by the court in an action brought under s 418 of the NLC by a person or body aggrieved by that decision (see p 681D–E).

[Bahasa Malaysia summary

Plaintif adalah pemilik berdaftar 364 lot tanah di Mukim Kluang, Johor ('tanah tersebut'). Pada 28 November 1996, defendan pertama menyebabkan suatu kaveat Pendaftar dimasukkan atas tanah tersebut melalui Borang 7 yang menyatakan kaveat Pendaftar dimasukkan untuk tujuan-tujuan yang dinyatakan dalam surat bertarikh 25 November 1996 yang membawa nombor rujukan (PR) 35/84 daripada Bahagian Pinjaman Perumahan. Surat bertarikh 25 November 1996 dan satu lagi surat bertarikh 1 November 1996 dengan rujukan nombor (PR) 35/84 pada hakikatnya ditulis oleh Polis Diraja Malaysia, defendan keempat kepada defendan pertama. Plaintif disampaikan dengan pemberitahuan kemasukan kaveat Pendaftar dalam Borang 19A yang menyatakan bahawa kaveat Pendaftar dimasukkan pada permohonan defendan keempat. Plaintif

memohon untuk membatalkan kaveat Pendaftar yang dimasukkan terhadap tanah plaintif, dengan menghujahkan, antara lain, bahawa tiada keterangan bahawa Bahagian Pinjaman Perumahan telah memohon untuk kemasukan kaveat Pendaftar dan oleh itu, kemasukan tersebut adalah salah, tanpa dasar undang-undang dan patut dibatalkan. Bagi pihak defendan pertama dan keempat, ia dihujahkan bahawa ini adalah kesilapan tulen dan defendan pertama tidak patut dihukum untuk kesilapan. Tambahan pula, ia dihujahkan bahawa pendaftar mempunyai budi bicara di sisi undang-undang untuk memasukkan kaveat Pendaftar untuk mencegah fraud atau urusniaga yang tak patut disebabkan s 320(1)(a) Kanun Tanah Negara 1965 ('KTN'). Plaintif juga menghujahkan bahawa tiada keterangan — dalam laporan polis yang dibuat oleh seorang bernama Wu Chun Hung ('Wu'), seorang pemegang saham defendan kedua yang membawa kepada kemasukan kaveat Pendaftar — yang menunjukkan apa-apa fraud atau urusniaga yang tak patut atas tanah tersebut mahupun perkara ini boleh dilanjutkan kepada tuntutan pemunyaan atas tanah tersebut.

Diputuskan, menolak permohonan:

(1) Daripada matriks fakta keseluruhan kes, pendaftar mestilah telah membuat kesilapan tulen dalam merekodkan tujuan menyerahsimpan kaveat Pendaftar dalam Borang 7. Ini adalah nyata daripada Borang 19A dalam mana ia dinyatakan kaveat Pendaftar dimasukkan atas permohonan Polis Diraja Malaysia dan nombor rujukan dalam Borang 7 yang membawa nombor rujukan Polis Diraja Malaysia. Penjelasan sepatutnya dikemukakan untuk kesilapan ini tetapi ia tidak penting dan tiada keperluan untuk berbuat yang sama (lihat ms 684I dan 685A–B).

(2) Atas penelitian laporan polis, adalah amat ketara bahawa Wu tidak menghadkan diri kepada saham-saham syarikat plaintif. Laporan polis membuat rujukan kepada perjanjian bertulis bertarikh 31 Disember 1997 dalam mana defendan kedua membeli segala saham dalam syarikat plaintif dan ini semestinya bermakna segala hak dan kepentingan plaintif termasuk 364 lot tanah yang dibeli oleh defendan kedua. Dilihat dari perspektif ini, adalah wajar untuk polis meminta pendaftar supaya memasukkan kaveat Pendaftar kerana terdapat unsur fraud (lihat ms 687D–E dan 688D).

(3) Maklumat yang disampaikan oleh polis kepada pendaftar membentuk material yang mencukupi di sisi undang-undang untuk pendaftar melaksanakan budi bicaranya untuk memasukkan kaveat Pendaftar yang patut kekal sehingga siasatan telah diselesaikan oleh polis (lihat ms 690B–C); *AR PL Palaniappa Chettiar v PL AR Letchumanan Chettiar & Anor* [1982] 1 MLJ 232, *Lim Ah Hun v Pendaftar Hakmilik Tanah Pulau Pinang & Anor* [1990] 3 MLJ 34 dan *Registrar of Titles v Temenggong Securities Ltd* [1976] 1 WLR 951; [1976] 2 MLJ 44 diikut.

Per curiam:

Pelaksanaan budi bicara oleh pendaftar tidak boleh diteliti melainkan ia telah dilaksanakan secara mala fide atau ultra vires. Mandamus tidak akan terpakai untuk mengarahkan pendaftar melaksanakan budi bicara dalam cara tertentu tetapi terpakai untuk mengarahkan beliau melaksanakannya sekiranya beliau gagal melaksanakannya sama sekali. Keputusan pendaftar untuk memasukkan kaveat Pendaftar (tetapi bukan berhubung dengan kegagalan beliau untuk berbuat demikian) boleh diuji oleh mahkamah dalam satu tindakan yang dibawa di bawah s 418 KTN oleh orang atau badan yang terkilan oleh keputusan itu (lihat ms 681D–E).]

Notes

For cases on registrar's caveat, see 8 *Mallal's Digest* (4th Ed, 1996 Reissue) paras 2224–2238.

Cases referred to

AR PL Palaniappa Chettiar v PL AR Letchumanan Chettiar & Anor [1982] 1 MLJ 232 (folld)
Boonsom Boonyanit v Adorna Properties Sdn Bhd [1990] 3 MLJ 444; [1997] 2 MLJ 62 (refd)
Colonial Bank v Whinney (1885) 30 Ch D 261 (refd)
Eng Mee Yong & Ors v V Letchumanan [1979] 2 MLJ 212 (refd)
JB Young, deceased, Re [1955] MLJ 108 (refd)
Land Executive Committee of Federal Territory v Syarikat Harper Gilfillan Bhd [1981] 1 MLJ 234 (refd)
Leong Seng Kiat v Khaw See Song [1988] 2 MLJ 365 (refd)
Lim Ah Hun v Pendaftar Hakmilik Tanah, Pulau Pinang & Anor [1990] 3 MLJ 34 (folld)
Registrar of Titles, Johore v Temenggong Securities Ltd [1976] 2 MLJ 44; [1976] 2 WLR 951 (folld)
Saminathan v Pappa [1981] 1 MLJ 121 (refd)
Susannah Sharp v Wakefield & Ors [1891] AC 173 (refd)
Templeton (Registrar of Titles (Vic)) v Leviathan Pty Ltd (1921) 30 CLR 34 (refd)

Legislation referred to

National Land Code 1965 ss 319(1)(b), (2), (3), 320, 320(1)(a), (b)(i), (ii), (ba), (c), 320(2), 321(1), (2), 344(3), 380, 392(2), 417, 418, Form 7, Form 19A
Penal Code (FMS Cap 45) s 420

K Sila Dass (*Meneka K* with him) (*K Sila Dass & Partners*) for the plaintiff.

Abdul Rasid bin Sudin (Federal Counsel cum Deputy State Legal Adviser) for the first and fourth defendants.

Navamani Arumugam (*Navamani Arumugam & Co*) for the second and third defendants.

Abdul Malik Ishak J: This was an originating motion in encl 4 filed by the plaintiff to cancel the Registrar's caveats entered against the plaintiff's lands comprised in PTD 27356 HS (D) 26670 till PTD 27722 HS (D) 27033, Mukim Kluang, Daerah Kluang, Johor totalling 364 lots of land held in 364 separate titles. It was not disputed that the plaintiff was the registered proprietor of all the 364 lots of land. It was in evidence that the first defendant entered the Registrar's caveats on the plaintiff's lands at the behest of the fourth defendant. The fourth defendant had made an application for the entry of the Registrar's caveats on the strength of a police report lodged by the third defendant, the director of the second defendant. The first defendant through Adib Azhari bin Daud deposed an affidavit-in-reply in encl 9 dated 19 March 1997 and there he said that the fourth defendant had intimated that the investigations had not been completed and consequently, the first defendant could not cancel the Registrar's caveats.

The plaintiff was perturbed at the existence and continuance of the Registrar's caveats on the 364 lots of land. The effect of a Registrar's caveat is manifold. It prohibits the registration, endorsement or entry on the register document of title of any instrument of dealing. It too prohibits any claim to the benefit of a tenancy exempt from registration and any lien-holder's caveat as provided under s 319(1)(b) of the National Land Code 1965 ('the NLC'). By s 319(2) of the NLC, the prohibitive effect of the Registrar's caveat is more pronounced and severe than a private caveat for the simple reason that a Registrar's caveat prohibits the registration of any such instruments presented for registration before the caveat was entered and also to such claim or lien-holder's caveat or the application for endorsement or entry received before that time. However, if the instrument has been duly registered or claim to the benefit of the tenancy has been duly endorsed or the entry of the lien-holder's caveat has been duly registered before the entry of the Registrar's caveat, the prohibition of the Registrar's caveat will not apply. Section 319(3) of the NLC vests a discretionary power to the registrar to waive the prohibition in any case where he is satisfied that to do so will not be inconsistent with the purpose for which that caveat is entered, but, in any other case, he shall reject the instrument or, as the case may be, the application for endorsement or entry of the lien-holder's caveat.

Now, the entry of the Registrar's caveat shall be in Form 7 as exemplified under s 321(1) of the NLC. The first defendant in Form 7 (exh 'PCK 39' of encl 3) stated that the entry of the Registrar's caveats on those 364 lots of land was for the following purpose:

> Sebagaimana di dalam surat Lampiran Bil (PR) 35/84 bertarikh 25 November 1996 daripada Bahagian Pinjaman Perumahan.

A perusal of Form 7 showed that it was dated 28 November 1996 and the endorsements on the documents of titles were effected under the hand and seal of the registrar together with the statements of the times of entries. The dates and times of the entries were listed as 28 November 1996 at 8.47am. Under s 321(2) of the NLC as soon as may be after the entry of the Registrar's caveat, the registrar shall serve upon the proprietor of the

land thereby affected, a notification in Form 19A. In the present case, that notification under Form 19A was dated 28 November 1996 and it was served on the plaintiff — Agrimal Project Sdn Bhd. A perusal of Form 19A as seen in exh 'PCK 39' of encl 3 revealed that the Registrar's caveat was entered on the application of the Polis DiRaja Malaysia. Somewhere in the middle portion of Form 19A, the following handwritten words were written therein:

> Ibu Pejabat,
> Jabatan Siasatan Jenayah,
> Polis DiRaja Malaysia 80990,
> Johor Bahru.

Why then must the words 'daripada Bahagian Pinjaman Perumahan' appear in Form 7 if in fact the Registrar's caveats were lodged on an application by the police? The answer is not far to seek and may be found in the reference number that appeared in Form 7 itself, namely, 'Bil: (PR) 35/84 bertarikh 25 November 1996'. This reference number referred to a letter from the police addressed to the Pengarah Tanah dan Galian Johor and for clarity it is reproduced hereinunder (see exh 'PCK 37' of encl 3):

> Ruj Kami: (PR) 35/84
> Tarikh: 25 November 1996
>
> Pengarah,
> Tanah dan Galian Negeri Johor,
> (Bahagian Kaveat),
> Tingkat 4 dan 5,
> Bangunan Sultan Ibrahim,
> Bukit Timbalan,
> 80000 Johor Bahru.
> (up: Encik Khalid bin Mustafa)
>
> Tuan,
>
> Geran No 12381 Lot 3005
> Mukim Kluang, Johor
>
> Adalah saya dengan hormatnya merujuk kepada surat saya siri sama bertarikh 1 November 1996 berkaitan dengan Johor Bahru Rpt No 26158/96.
>
> (2) Untuk menjaga kepentingan hakmilik pendaftaran tanah yang sah, saya memohon tindakan kaveat (kaveat pendaftar) diambil di bawah s 319(1) Kanun Tanah Negara 1965. Permohonan ini dibuat menurut s 320(1)(a), iaitu untuk mencegah penipuan atau urusniaga yang tidak patut.
>
> (3) Sila beri akuan penerimaan.
>
> Sekian, terima kasih.
>
> 'Berkhidmat Untuk Negara'

A Saya yang menurut perintah,
—Sgd—
(Freda Josephine Gonzales) Supt
bp Ketua Jabatan Siasatan Jenayah,
bp Ketua Polis Johor.
sk Mr Wu Chun Hung

B The letter which Supt Freda Josephine Gonzales referred to and dated 1 November 1996 — and which was said to be related to Johor Bahru Rpt No 26158/96 — was exhibited as exh 'PCK 38' in encl 3 and this very letter makes for interesting reading. It was worded thus:

C Ruj Kami: (PR) 35/84
Tarikh: 1 November 1996

Pengarah,
Tanah dan Galian Negeri Johor,
(Bahagian Kaveat),
Tingkat 4 dan 5,
D Bangunan Sultan Ibrahim,
Bukit Timbalan,
80000 Johor Bahru.
(up: Encik Khalid bin Mustafa)

Tuan,

E Geran No: 12381 — Lot 3005
Mukim Kluang Johor

Adalah dimaklumkan bahawa seorang rakyat Taiwan bernama Wu Chun Hung yang memiliki Pasport No M 3082412 telah membuat satu laporan
F polis di Balai Polis Sentral (Johor Bahru Rpt No 26158/96). Satu salinan repot itu disertakan. Mengikut repot itu, beliau menuduh bahawa seorang bernama Wu Tsung Pai telah menipu beliau dengan tidak pindahmilik tanah-tanah seperti di bawah ini kepada Syarikat Kemajuan Jaya Sdn Bhd selepas pembayaran telah dilakukan:

G Mukim Kluang

	PTD	HS (D)
1	27356 – 27377	26670 – 26691
2	27378 – 27399	26692 – 26713
3	27400 – 27421	26714 – 26735
4	26422 – 27443	26736 – 26757
H 5	27444 – 27465	26758 – 26779
6	27466 – 27487	26780 – 26801
7	27488 – 27509	26802 – 26823
8	27510 – 27531	26824 – 26845
9	27532 – 27555	26846 – 26867
10	27556 – 27577	26868 – 26889
I 11	27578 – 27599	26890 – 26911
12	27600 – 27621	26912 – 26933
13	27622 – 27643	26934 – 26955

14	27644 – 27665	26956 – 26977
15	27666 – 27688	26978 – 26999
16	27689 – 27710	27000 – 27021

(2) Repot ini telah dijeniskan sebagai 'criminal offence' di bawah s 420 Kanun Keseksaan dan siasatan masih diteruskan.

(3) Sekian untuk makluman dan tindakan tuan. Terima kasih.

Saya yang menurut perintah,
—Sgd—
(Freda Josephine Gonzales) Supt
bp Ketua Jabatan Siasatan Jenayah,
bp Ketua Polis Johor.
sk Mr Wu Chun Hung

Mr K Sila Dass for the plaintiff argued that there was no evidence that the 'Bahagian Pinjaman Perumahan' had applied for the entry of the Registrar's caveat and consequently, it was said that the entry of such a caveat was wrong, without legal basis and should therefore be removed. The managing director of the plaintiff's company in the person of Pang Chee Khiong affirmed an affidavit in encl 3 and at para 15.3(e) thereof, it was deposed that:

> The Registrar's caveat which the defendant [it must be the first defendant] has entered has no basis because the Bahagian Pinjaman Perumahan had not requested the defendant to enter the Registrar's caveat.

At para 16.1 of encl 3, Pang Chee Khiong deposed as follows:

> I am advised which I verily believe that the whole exercise involving the entry of the Registrar's caveat is misconceived, erroneous and there is no lawful basis for it to remain thus jeopardizing the plaintiff's development.

It is undeniable that the powers conferred upon the registrar under s 320 of the NLC are entirely discretionary. That discretion must be judicially exercised. Lord Halsbury LC — when reviewing the power of the licensing justices for the renewal of a licence for the sale of intoxicating liquors under the Licensing Acts 1828, 1872 and 1874 — had this to say in *Susannah Sharp v Wakefield & Ors* [1891] AC 173 (HL) especially at pp 179–180:

> An extensive power is confided to the justices in their capacity as justices to be exercised judicially; and 'discretion' means when it is said that something is to be done within the discretion of the authorities that that something is to be done according to the rules of reason and justice, not according to private opinion: *Rooke's Case* 5 Rep 100; according to law, and not humour. It is to be, not arbitrary, vague, and fanciful, but legal and regular. And it must be exercised within the limit, to which an honest man competent to the discharge of his office ought to confine himself: *Wilson v Rastall* 4 TR at p 757. So in *R v Boteler* 33 LJ MC 101, where justices thought proper not to enforce the law because they considered that the Act in question was unjust in principle, the Court of Queen's Bench compelled them by a peremptory order to do the act which nevertheless the statute had said was in their discretion to do or leave undone. So, again, in the case of overseers who were required by 3 & 4 Vict c 61, to certify whether applicants for beer

> licenses were real residents and ratepayers of the parish, it was held that they were not entitled to refuse the certificate on the ground that in their opinion there were already too many public houses, or that the beer shop was not required. So a discretion which empowered justices to grant licenses to innkeepers as in the exercise of their discretion they deemed proper would not be exercised by coming to a general resolution to refuse a license to everybody who would not consent to take out an excise license for the sale of spirits: *R v Sylvester* 31 LJMC 93.

In *AR PL Palaniappa Chettiar v PL AR Letchumanan Chettiar & Anor* [1982] 1 MLJ 232, Wong Kim Fatt JC succinctly said (at p 234):

> It is clear that under the Code, the Registrar may act on his own motion or upon information or request made to him. The word 'may' indicates a discretion on the part of the Registrar. He is not bound to act on such information or request in every case. Thus in the case of an entry of a Registrar's caveat, the Registrar is said to perform a quasi-judicial function in the exercise of that discretion, but the discretion must always be exercised judiciously or reasonably and in good faith, not arbitrarily nor in bad faith.

In my judgment, the registrar's exercise of discretion cannot be examined unless it was exercised mala fide or ultra vires. Mandamus will not lie to direct the registrar to exercise his discretion in a particular way but it will lie to direct him to exercise it if he fails to exercise it at all. Just like the present case, the registrar's decision to enter a Registrar's caveat (but not in regard to his failure to do so) may be tested by the court in an action brought under s 418 of the NLC by a person or body aggrieved by that decision.

An argument was advanced that the registrar must be certain and satisfied when exercising his discretion to ascertain that the party who was seeking his assistance to file the Registrar's caveat was not only the proper party but the correct party as well. It was argued that the first defendant had identified the Bahagian Pinjaman Perumahan as the party that sought the entry of the Registrar's caveat but that party was not the correct and proper party. The letter dated 25 November 1996 which the first defendant relied upon was not a letter from the Bahagian Pinjaman Perumahan. In Form 7, there was no reference at all that the fourth defendant — the Ketua Siasatan Jenayah, Ketua Polis Johor — had applied for the entry of the Registrar's caveat. In short, the registrar should not throw caution to the wind. As Lord Diplock said in *Registrar of Titles, Johore v Temenggong Securities Ltd* [1976] 2 MLJ 44 (PC) especially at p 47:

> Under these sections [referring to ss 320 and 321(3) of the NLC], the registrar's functions in relation to registrar's caveats are not exclusively ministerial as they are in relation to the other kinds of caveats. They require the exercise of a discretion that is quasi-judicial in its nature. The prohibitory consequences resulting from the entry of a registrar's caveat impose what may be very damaging restrictions upon the private rights of the proprietor of the land. The registrar is not entitled to impose them unless they appear to him to be necessary or desirable for one or more of those purposes which upon the true construction of the section are specified in para (a) or (b) of s 320(1), or necessary or desirable to counteract such documentary error as is mentioned in para (c).

In determining whether or not to exercise the power conferred upon him by the section, the registrar can only act upon such information as is available to him. This will consist of what is entered in the register itself or filed in the registry, together with such additional information as may have been supplied to him by whoever has requested him to exercise his power to enter a registrar's caveat.

The circumstances wherein a Registrar's caveat may be entered are clearly provided for in s 320 of the NLC and they are as follows:

(1) Subject to subsection (2), Registrar's caveat may be entered in respect of any land wherever such appears to the Registrar to be necessary or desirable —

(a) for the prevention of fraud or improper dealings; or

(b) for protecting the interests of —

(i) the Federation or the State Authority; or

(ii) any person who is in his opinion under the disability of minority, mental disorder or unsoundness of mind, or is shown to his satisfaction to be absent from the Federation; or

(ba) for securing that the land will be available to satisfy the whole or part of any debt due to the Federation or the State Authority, whether such debt is secured or unsecured and whether or not judgment thereon has been obtained; or

(c) by reason of some error appearing to him to have been made in the register or issue document of title to the land or any other instrument relating thereto.

(2) Knowledge by the Registrar of the fact that any land or interest therein has been acquired, or is to be held, by any person or body in a fiduciary capacity shall not of itself constitute a ground for entering a Registrar's caveat in respect of that land.

From a plain reading of s 320(1)(a) of the NLC, it is intended to prevent any fraud or improper dealing brought to the attention of the registrar. Section 320(1)(b)(i) of the NLC is intended to protect the interests of the Federation or the State Authority, whereas s 320(1)(b)(ii) of the NLC is intended to protect the interest of a minor or a mentally disordered person, or a person who is absent from the country for an unspecified period of time. The provisions of s 320(1)(ba) of the NLC give assurance that the land will be available to satisfy the whole or part of any debt due to the Federation or the State Authority, whether such debt is secured or unsecured and whether or not judgment thereon has been obtained. The provisions in s 320(1)(c) of the NLC cover the situation where the registrar, in his wisdom, discovers an error in the title or other instrument whereupon he can enter his caveat. In such a situation, the Registrar's caveat entered by the registrar would be used primarily to protect the status quo pending correction under s 380 of the NLC. In my judgment, the error referred to in s 320(1)(c) of the NLC emanates from the registrar's office and not from outside. Section 320(2) of the NLC enacts that the registrar has no obligation or duty to enter a Registrar's caveat when he has knowledge of the fact that any land or interest therein has been acquired or when he has received notice outside the register of a fiduciary relationship. This subsection brings into focus the issue of a trust created outside the register

where the trustees are registered as such and where the trust instrument has been filed for safe custody and reference. In *Templeton v Leviathan Pty Ltd* (1921) 30 CLR 34, it was held, inter alia, that where the registrar knew (but he did not have notice of an entry of a private caveat) that an instrument fit for registration was in breach of a trust (even though the trust deed had not been filed for reference), then the registrar was in a position to refuse to register that instrument. The position would not be the same under our NLC. Section 344(3) of the NLC would enable the registrar to entertain registration of any land, share or interest 'as trustee' or, as the case may be, 'as trustees'.

It was argued that the first defendant could act should any one of the conditions in s 320(1) of the NLC be present of which he has knowledge of or is brought to his knowledge by the appropriate authority or person and who had requested him to exercise his power to enter a Registrar's caveat. Generally speaking, the caveat does not act to validate the caveator's interest but merely freezes the register to enable the caveator to pursue his claim to be entitled to register. It is said that the caveat's:

> ... general function is to suspend the process of registration until conflicting claims have been settled. It is a unilateral act and no person can create rights in his own favour nor enlarge or add to his existing proprietary rights by means of a caveat. The effect of a ... caveat ... is to prohibit the registration ... pertaining to any dealing with the land in dispute so long as the caveat continues in force (per Syed Agil Barakbah J in *Damodaran v Vasudeva* [1974] 1 MLJ 128 at p 129F–G).

It would appear that the effect of a caveat generally would be analogous to that of an injunction granted by the court of law. As Lord Diplock said in the case of *Eng Mee Yong & Ors v V Letchumanan* [1979] 2 MLJ 212 (PC) especially at p 214:

> The caveat under the Torrens system has often been likened to a statutory injunction of an interlocutory nature restraining the caveatee from dealing with the land pending the determination by the court of the caveator's claim to title to the land, in an ordinary action brought by the caveator against the caveatee for that purpose. Their Lordships accept this as an apt analogy with its corollary that caveats are available, in appropriate cases, for the interim protection of rights to title to land or registrable interest in land that are alleged by the caveator but not yet proved.

Both *Damodaran* and *Eng Mee Yong* dealt with private caveats but the observations of their Lordships in these two cases are germane and are applicable to the present case.

Applying these principles to the forefront of the case, it was submitted that this court would certainly hold that the Registrar's caveat entered by the first defendant at the request of the Bahagian Pinjaman Perumahan was wrong as the latter never requested the entry of the Registrar's caveat. Next, it was submitted that assuming that this was an error on the part of the first defendant, that error was never explained at all. A submission was advanced that in the event that a wrong party was cited, an amendment should have been made. But alas, it was said that no attempt was made to correct the error — if at all that was an error. Now, since the Registrar's

caveat has damaging restrictions, the first defendant was under a duty to ensure that in entering that caveat, it was proper for him to do so. It was said that the registrar — meaning the first defendant — was under a duty to ascertain the correct party that requested the entry of the Registrar's caveat. There was this failure on the part of the registrar, so it was submitted, and consequently, it was impressed upon me that there was a wrong exercise of discretion by the registrar. Flowing from this, the Registrar's caveats on those pieces of land ought to be removed, so ran the submission of Mr K Sila Dass. Indeed, these submissions were quite attractive.

Mr Abdul Rasid Sudin, learned federal counsel for the first and fourth defendants, agreed that the notice of entry for the Registrar's caveat was in the name of the Bahagian Pinjaman Perumahan but nevertheless he argued that it was a genuine mistake and the first defendant should not be penalized for it. He submitted that from the letters dated 1 November 1996 and 25 November 1996, the first defendant had in mind the police and not the Bahagian Pinjaman Perumahan that requested the entry of the Registrar's caveat. He too submitted that the reference number '(PR) 35/84' belonged to the police and not the Bahagian Pinjaman Perumahan. It was argued that the law gave the registrar the discretion to enter a Registrar's caveat for the prevention of fraud and improper dealing as envisaged under s 320(1)(a) of the NLC. Indeed, the registrar through Adib Azahari bin Daud in encl 9 of para 4 deposed categorically to the following effect:

> Merujuk kepada perenggan 14 dan 15 afidavit tersebut, saya sesungguhnya percaya bahawa kaveat Pendaftar telah dimasukkan ke atas tanah yang dipegang di bawah pegangan hakmilik HS(D) 26670 hingga 26692 untuk lot PTD 27356 hingga 27378 kerana ia ada kaitan dengan penyiasatan polis ke atas kes penipuan atau urusniaga yang tidak patut.

In regard to the on-going investigations by the police, this was what Adib Azahari bin Daud deposed at para 5 of encl 9:

> Saya telah membuat pertanyaan kepada pihak polis melalui surat bertarikh 20 Januari 1997 untuk mendapat kepastian sama ada siasatan polis berdasarkan laporan polis No 26158/96 masih berjalan ataupun telah selesai.

At para 6 encl 9 it was deposed that:

> Melalui surat mereka bertarikh 31 Januari 1997, pihak polis telah memaklumkan bahawa mereka masih lagi menjalankan penyiasatan ke atas laporan polis tersebut dan hingga kini tiada sebarang keputusan diberikan kepada pihak Pengarah Tanah dan Galian.

In my judgment, from the factual matrix of the whole case the registrar must have made a genuine mistake in recording the purpose of lodging the Registrar's caveat in Form 7. That this was so could easily be surmised from Form 19A itself as it was categorically stated therein that the Registrar's caveat was entered on the application of the Police DiRaja Malaysia. The reference number that appeared in Form 7 as '(PR) 35/84' was in fact a reference number of the Polis DiRaja Malaysia and this fact was amply

borne out by letters dated 1 November 1996 and 25 November 1996 respectively which have been reproduced and adverted to in the early part of this judgment. Ideally, an explanation should have been advanced for this mistake but the mistake was so inconsequential that there was no necessity of explaining it. This was my judgment and I so hold accordingly.

Next, it was argued that the police report vide Balai Polis Sentral (Johor Bahru Report No 26158/96) of Wu Chun Hung did not say that he had been cheated or for that matter that the second defendant was cheated over those pieces of land or that the documents of title should have been transferred into the name of the second defendant. It was also argued that Wu Chun Hung's claim on behalf of the second defendant was that the second defendant should have been registered as the shareholder in respect of the shares in the plaintiff's company. But somehow the police had extended the claim to shares as a claim to ownership of lands. This was said to be distorting the facts or misrepresenting the facts and for these reasons the Registrar's caveats should be cancelled. It is opportune to reproduce in extenso the police report lodged by Wu Chun Hung. It is worded thus:

> Saya adalah seorang daripada pemegang-pemegang saham dan pengarah-pengarah dalam Syarikat Kemajuan Jaya Sdn Bhd yang beralamat di c/o 117, Jalan Dato' Suleiman, Taman Century, 80230 Johor Bahru.
>
> Melalui satu perjanjian bertulis yang bertarikh 31 Disember 1993, Syarikat Kemajuan Jaya Sdn Bhd telah membeli daripada beberapa orang kesemua saham-saham dalam sebuah syarikat yang bernama Agrimal Project Sdn Bhd.
>
> Perjanjian tersebut adalah ditandatangani bagi pihak Kemajuan Jaya Sdn Bhd oleh Wu Tsung Pai (Pasport Taiwan No M 2704217) iaitu anak saya juga yang berjawatan sebagai 'Managing Director' dalam Kemajuan Jaya Sdn Bhd pada masanya.
>
> Harga belian saham-saham Agrimal Project Sdn Bhd telah dijelaskan dan sertakan resit rasmi daripada peguam yang diterima. Harga belian itu ialah jumlah RM800,000 dan dibagi daripada bayaran yang tersebut di bawah ini:
>
> | | | |
> |---|---|---|
> | (1) Resit rasmi No 15196 bertarikh 3/1/94 | ... RM | 80,000 |
> | (2) Resit rasmi No 15639 bertarikh 30/3/94 | ... RM | 360,000 |
> | (3) Resit rasmi No 15498 bertarikh 30/6/94 | ... RM | 360,000 |
> | | RM | 800,000 |
>
> Dan juga sertakan dua T/T rasmi yang dikirim daripada Taiwan, semasa saya berada di Taiwan, T/T itu diterima pada Wu Tsung Pai akaun, kerana di Taiwan hanyalah Hongkong Bank juga boleh dilalui T/T ke Malaysia.
>
> | | |
> |---|---|
> | (1) Hongkong Bank T/T rasmi bertarikh 24 Disember 1993 | RM 716,864.24 |
> | (2) Hongkong Bank T/T rasmi bertarikh 28 Januari 1994 | RM 108,417.79 |
> | | RM 825,282.03 |

Sertakan surat menerangkan jawatan yang seseorang dibuat dalam setiap wang kiriman di masa itu, dan juga menerangkan cara-cara 'transactions' yang dikenakan daripadanya: A

(1) Kuo Cheh Hua
(2) Yew Cheng Hong.

Walau bagaimanapun, saham-saham dalam Agrimal Project Sdn Bhd tidak pernah dipindahmilik kepada Kemajuan Jaya Sdn Bhd mengikut perjanjian (S & P Agreement) yang bertarikh 31 Disember 1993. B

Dan lebih kurang bertarikh 7 Februari 1995 (sertakan surat), saya telah berjumpa dengan setiausaha syarikat Agrimal Project Sdn Bhd pada masa itu dan beliau mengesahkan bahawa saham-saham yang berkenaan telah dipindahmilik kepada: C

(1) Wu Tsung Pai
(2) Lee Kok Guan
(3) Mohd Ali bin Nawi.

Sertakan surat bertarikh 13 Februari 1995 dan 'Resolution' daripada setiausaha yang pindahmilik telah dibuat di Syarikat Agrimal Project Sdn Bhd pada 24 November 1994. D

Dan juga saya telah menyuruh anak saya Wu Tsung Pai supaya menyerahkan balik saham-saham tersebut tetapi tidak berjaya.

Pada lebih kurang bulan Mei 1995, saya telah mendapati bahawa Wu Tsung Pai dan kedua-duanya telah memasuki satu perjanjian bertarikh 27 Januari 1995 untuk menjualkan saham-saham dalam Agrimal Project Sdn Bhd kepada seorang yang bernama Pang Chee Khiong (KP No 7231676) yang beralamat di 4, Jalan Kinabalu, Taman Koperasi, 85000 Kluang dan juga alamat 2, Jalan Ungku Mohd Salleh, Kluang Baru, 85000 Kluang. Perjanjian berkenaan adalah disediakan oleh Tetuan Gan & Tey, peguambela dan peguamcara di Suite 339, Tingkat 3, Johor Tower, Jalan Gereja, 80100 Johor Bahru. E F

Saya telah menelefon Tey Lim Bok di Tetuan Gan & Tey dan juga kembarkan surat dari peguambela kami, iaitu HK Yoong yang bertarikh 8 Mei 1995 supaya menahan penjualan saham-saham itu tetapi tidak berjaya.

Saya juga telah mengarahkan peguam untuk memulakan tindakan mahkamah untuk menghalang pindahmilik saham-saham itu kepada Pang Chee Khiong tetapi pada masa itu saham-saham tersebut telah pun dipindahmilik kepada Pang Chee Khiong dan lima orang lain iaitu: G

Sertakan Agrimal Project Sdn Bhd — Annual Return.

(1) Pang Chee Khiong
(2) Pang Yoke Lian H
(3) Pang Nyuk Yin
(4) Jasmi bin Ahmad
(5) Khow See Teng
(6) Ding Meen Ting.

Pada masa pindahmilik itu dilakukan, Pang Chee Khiong belum menjelaskan harga belian untuk saham-saham berkenaan kepada Wu Tsung Pai, Mohd Ali bin Nawi dan Lee Kok Guan. I

A Daripada kertas-kertas yang telah dijawab dan saksinya, saya rasa ada di antara beberapa pihak (sic) untuk melucutkan saham-saham dalam Agrimal Project Sdn Bhd daripada Kemajuan Jaya Sdn Bhd.

Sgd
.....
B Wu Chun Hung

Diakui Salinan yang Sah
Sgd (illegible)
Ketua OCPD Daerah, Johor Bahru.

C The police report was drafted in poor Bahasa Malaysia and it was classified by the police under s 420 of the Penal Code (FMS Cap 45) and investigations were still in progress. In answer to my question, Mr Abdul Rasid Sudin for the first and fourth defendants said that he had enquired of the Land Office which told him that the police investigations had not been completed.

D On perusal of the police report, it was abundantly clear that Wu Chun Hung was not confining himself to the shares of the plaintiff's company. On the contrary, the police report made reference to a written agreement dated 31 December 1993 where Kemajuan Jaya Sdn Bhd as the second defendant bought all the shares of the plaintiff's company. In my E judgment, buying all the shares in the plaintiff's company must necessarily mean that Kemajuan Jaya Sdn Bhd was buying over the plaintiff's company with all those rights and interests in the plaintiff's company including the 364 lots of land. This was my judgment and I so hold accordingly. The contents of that sale and purchase agreement dated 31 December 1993 between Kemajuan Jaya Sdn Bhd and the plaintiff bore out clearly the F finding and judgment of this court. Indeed, to contend as the plaintiff did that the transaction of 31 December 1993 was only for the sale of the 300,000 shares was to misrepresent the actual transaction and to ignore the fact that the 364 lots of land were specifically mentioned in the agreement for sale and that the 364 documents of title were delivered to G Kemajuan Jaya Sdn Bhd's solicitors Messrs Lim & Hooi by Messrs HH Liong & Co. Incidentally, this point was also deposed to by Wu I Tee — the director of Kemajuan Jaya Sdn Bhd (the second defendant) as well as the son of Wu Chun Hung — in his additional affidavit at encl 16 para 15 which was affirmed on 25 April 1997. To re-emphasize that Kemajuan Jaya Sdn Bhd purchased the 364 lots of land from the plaintiff, recital 'F' H of the agreement dated 31 December 1993 should be referred to. It was worded thus (see encl 10 exh 'WCH1'):

> The company [referring to Agrimal Project Sdn Bhd] is the registered and beneficial owner of all those pieces of properties, full particulars thereof are more clearly described in the Third Schedule hereto (hereinafter called 'the I said properties'). The said properties are not encumbered to any bank or financial institutions and are free from all registrable encumbrances whatsoever.

Reference should also be made to cl 8(b)(vi) of the agreement dated 31 December 1993 (encl 10 of exh 'WCH 1') which was couched in this manner:

> Upon the execution hereof, the vendors shall deliver the following documents to the purchaser's solicitors, M/s Lim & Hooi (the purchaser's solicitors) to be held by them as stakeholders:
>
> (vi) all the original title deeds to the said properties free from all encumbrances whatsoever together with the current assessment and quit rent receipts.

The allegation by Wu Chun Hung in his police report that the:

> ... saham-saham dalam Agrimal Project Sdn Bhd tidak pernah dipindahmilik kepada Kemajuan Jaya Sdn Bhd mengikut perjanjian (S & P Agreement) yang bertarikh 31 Disember 1993

must necessarily mean that the titles to the 364 lots of land had not been transferred to Kemajuan Jaya Sdn Bhd (the second defendant). Seen from this perspective, it was perfectly right for the police to request the registrar (the first defendant) to enter the Registrar's caveats on those lands as there was an element of fraud. Fraud was perpetrated by the plaintiff when the titles to the 364 lots of land were not transferred to Kemajuan Jaya Sdn Bhd. This was my judgment and I so hold accordingly. I pause here to say that fraud must be proved beyond reasonable doubt (*Saminathan v Pappa* [1981] 1 MLJ 121 at p 126 as applied in *Boonsom Boonyanit v Adorna Properties Sdn Bhd* [1997] 2 MLJ 62 at p 74). As the law now stands, the only way to stop the perpetration of fraud or improper dealings would be by way of an entry of the Registrar's caveat. Towards this end, the registrar had correctly exercised his discretion in entering those caveats.

Writing a separate judgment for the Court of Appeal in *Colonial Bank v Whinney* (1885) 30 Ch D 261, Fry LJ had this to say in regard to the character of a share in a company. This was what his Lordship said at pp 286–287 of the report:

> What, then, is the character of a share in a company? Is it in its nature a chose in possession, or a chose in action? Such a share is, in my opinion, the right to receive certain benefits from a corporation, and to do certain acts as a member of that corporation; and if those benefits be withheld or those acts be obstructed, the only remedy of the owner of the share is by action. Of the share itself, in my view, there can be no occupation or enjoyment; though of the fruits arising from it there may be occupation, enjoyment, and manual possession. Such a share appears to me to be closely akin to a debt, which is one of the most familiar of choses in action; no action is required to obtain the right to the money in the case of the debt, or the right to the dividends or other accruing benefits in the case of the share; but an action is the only means of obtaining the money itself or the other benefits in specie, the right to which is called in one case a debt and in the other case a share. In the case alike of the debt and of the share, the owner of it has, to use the language of *Blackstone*, 'a bare right without any occupation or enjoyment'. A debt, no doubt, differs from a share in one respect, that it confers generally a more limited right than a share, and that when once paid

A it is at an end; but this distraction appears to me immaterial for the purpose now in hand.

Of course, in estimating the value of the share, the court must take into consideration every advantage and disadvantage to the company and every benefit and clog attaching to the shares as well as the nature of the B particular company (*Re JB Young, deceased* [1955] MLJ 108 (CA)). In my judgment, the value of the shares of the plaintiff's company must be of high premium as it included all the 364 lots of land held in 364 separate titles.

An interesting point was raised by counsel for the plaintiff. It was C ingeniously argued that a further caveat cannot be entered once the earlier caveat was cancelled. Reference was made to s 392(2) of the NLC. It was sought to argue that the Registrar's caveat was 'a further caveat' as envisaged under s 392(2) of the NLC. This argument was entirely misconceived as s 392(2) of the NLC governs private and not Registrar's caveat.

Reverting back to the issue of fraud, s 320(1)(a) of the NLC refers to D fraud as actual fraud which would render a title defeasible. The Registrar should only caveat if he suspects that actual fraud has been perpetrated. Fraud under s 320(1)(a) of the NLC is linked to 'improper dealing'. These two ingredients complement one another. In *Boonsom Boonyanit v Adorna Properties Sdn Bhd* [1990] 3 MLJ 444, the prior registered proprietor E sought entry of a Registrar's caveat where she complained that the title had been used with a forged transfer to obtain the registration of the current registered proprietor. The court granted the application under s 417 of the NLC. In *AR PL Palaniappa Chettiar v PL AR Letchumanan Chettiar & Anor*, Wong Kim Fatt JC said (at p 234):

F > ... I was requested by counsel to consider the judgment of Chang Min Tat J (as he then was) in *Seet Soh Ngoh*'s case [1976] 1 MLJ 242. The learned judge held in that case that the court had the power to order the Registrar, since he was before the court, to enter a Registrar's caveat to prevent the fraud and improper dealing. With respect, I am in agreement with the decision of the learned judge.

G In *Lim Ah Hun v Pendaftar Hakmilik Tanah, Pulau Pinang & Anor* [1990] 3 MLJ 34, Mohamed Dzaiddin J (now FCJ) remarked that (at pp 35–36):

> Section 320(1)(a) of the Code enacts that subject to sub-s (2), a registrar's caveat may be entered in respect of any land wherever such appears to be necessary or desirable for the prevention of fraud or improper dealing.

H Per Lord Diplock in *Registrar of Titles, Johore v Temenggong Securities Ltd* [1976] 2 MLJ 44 at p 47:

> 'In determining whether or not to exercise the power conferred upon him by the section, the registrar can only act upon such information as is available to him. This will consist of what is registered in the register itself or filed in the registry, together with such additional information I as may have been supplied to him by whoever has requested him to exercise his power to enter a registrar's caveat.'

Encik Wong Kim Fatt in his article 'Registrar's Caveat Amended' in [1980] 1 MLJ vii at p viii further stated that before the registrar exercises his power

> of entry, he must be satisfied objectively with the information and/or facts supplied to him by any proper applicant. The request for entry may be made by letter to the registrar, who may require the information and/or facts to be verified by statutory declaration.

Applying these authorities to the facts of the present case, the information that was relayed by the police (the fourth defendant) to the registrar (the first defendant) as adumbrated in the early part of the judgment constituted in law sufficient material for the registrar to exercise his discretion to enter the Registrar's caveat which should remain until investigations had been completed by the police. So long as there is propriety — just like in the present case — the registrar was justified in entering the Registrar's caveat on those pieces of land. At this stage, there was no necessity for evidence of the most severe impropriety to appear so as to warrant the entry of the Registrar's caveat. As Wan Hamzah SCJ said in the case of *Leong Seng Kiat v Khaw See Song* [1988] 2 MLJ 365, where fraud and forgery were claimed, 'the question of forgery and fraud is an issue which should be thrashed out at the trial where all the relevant evidence would be adduced'.

The key issue would be the question of propriety or impropriety for the registrar to enter the Registrar's caveat. Thus, all the other points raised by Mr K Sila Dass which were outside this key issue will not be considered by this court as they can summarily be dismissed as irrelevant.

Learned counsel for the second and third defendants in the person of Miss Navamani Arumugam strenuously argued that all the affidavits filed on behalf of the plaintiff did not show mala fide or ultra vires on the part of the registrar when entering the Registrar's caveats. She submitted, rightly so, that the plaintiff had plunged into a frolic of his own when he made spurious allegations, totally scandalous and libellous and highly defamatory in nature. All these allegations were said to be unwarranted. It was her stand that the courts should not probe into the merits of the exercise of discretion by the registrar. She relied on a passage appearing at p 279 of a book entitled *Administrative Law of Malaysia and Singapore* by Prof MP Jain. That passage merits reproduction:

> We may start with the negative propositions that the courts do not probe into the merits of a discretionary action or decision. This is the basic proposition. The courts do not question a discretionary decision or action on such grounds as: whether it should have been taken or not; whether some other decision ought to have been taken; whether it is corrector proper; whether the grounds on which it is based are sufficient or not. A court does not so substitute its own decision for that of the concerned authority. Of the several options open to an authority in a given situation, it may opt for one and the courts would not sit as arbiters of the correctness or soundness of the view adopted by the concerned authority; it is not for the courts to say that this, and not that, view ought to have been adopted by the authority.

With respect, this passage cannot oust the jurisdiction of this court to examine the propriety or otherwise of the registrar when he entered the Registrar's caveats on those pieces of land in view of s 418 of the NLC. In *Land Executive Committee of Federal Territory v Syarikat Harper Gilfillan*

Bhd [1981] 1 MLJ 234, the Federal Court had to deal with a declaration that was sought in lieu of appealing against a decision of the registrar. Raja Azlan Shah (Ag LP) (as His Majesty then was) succinctly said (at p 237):

> If the relevant authority commits an error in the interpretation of the section, then an aggrieved party has a right of appeal to the High Court under s 418 of the Code. Parliament has on the ground of public policy found that that is a just and necessary right.

No doubt the exercise of discretion by the registrar cannot be checked *except* to see that it has in fact been exercised and that exercise was not made mala fide. This power of intervention must surely rest with the courts (*Registrar of Titles v Temenggong Securities Ltd* [1976] 2 WLR 951 especially at p 956). It is now trite law that when the registrar acts with propriety in exercising his discretion to enter the Registrar's caveat, like the present case, this court cannot interfere with that exercise of discretion. There is a passage in the judgment of the case of *Templeton (Registrar of Titles (Vic)) v Leviathan Pty Ltd* at p 64 that merits reproduction. It is this:

> Prima facie it is the duty of the Registrar to register any instrument presented in proper form and signed by a person competent in law, and, according to the title appearing on the register, to effect the dealing represented by the instrument. If an order of the Supreme Court purporting to authorize the dealing is within the jurisdiction of that court, it is not for the Registrar to question the propriety of that order.

For the reasons adumbrated above, encl 4 was dismissed with costs.

Application dismissed.

Reported by Lew Chee Seong